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IN THE

Supreme Court of the United States

No. 71-364

EDGAR A. PRICHARD,
Member State Board of Elections, *et al.*,
Appellants,

v.

CLIVE L. DuVAL, II, *et al.*,
Appellees.

MOTION TO AFFIRM SUBMITTED BY APPELLEE
Clive L. DuVal, II

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Appellee Clive L. DuVal, II., pursuant to Rule 16 of this Court, moves that the interlocutory order and decree of the three judge District Court for the Eastern District of Virginia herein appealed from be affirmed as to the Virginia House of Delegates reapportionment plan on the ground that the question is so insubstantial as not to require further argument.

As was pointed out in the opinion of the District Court, the House of Delegates reapportionment statute was patently unconstitutional because of grave population inequalities. The deviations from absolute equality in the legislative districts ranged from underrepresentation of 9.6 percent to an overrepresentation of 14 percent, or a total variance of 23.6 percent. The lower court properly held that such a plan did not meet the constitutional need for population equality. *Kirkpatrick v. Preisler*, 394 U.S. 526; *Wells v. Rockefeller*, 394 U.S. 542.

Contrary to the intimation in appellants' jurisdictional statement, the District Court did not act hastily or before the Virginia General Assembly had time to adopt a valid reapportionment plan on its own initiative. The General Assembly first met in special session for this very purpose on January 6, 1971. Its new statute reapportioning the House legislative districts was enacted March 1, 1971, and was promptly attacked by this appellee through suit filed on March 5, 1971.

Four times thereafter the General Assembly reconvened its special session on reapportionment, but on each occasion declined to change its unconstitutional House of Delegates redistricting plan. When appellee's request for injunction came before the District Court on May 24, 1971, that Court entered an order postponing the scheduled June 8 primary until September 14 and giving the legislature until June 15, to act appropriately; otherwise, the Court said, it would "proceed with the trial. . . . and thereafter formulate a plan of reapportionment within the prescription of the Voting Rights Act and resolving the valid objections, if any, of the plaintiffs to the 1971 reapportionment legislation."

After this order the legislature again reconvened in early June but refused to alter its redistricting plan for the House of Delegates. Under these circumstances, and with the once postponed primary only ten weeks away, the District Court had no alternative timewise but to formulate a reapportionment plan of its own which would remove the glaring in-

equities of the statute under attack. This it did, and it is submitted that the court's opinion fully justifies the action taken.

For the reasons above mentioned, the Motion to Affirm the judgment of the District Court reapportioning the Virginia House of Delegates should be granted.

Respectfully submitted,

Clive L. DuVal, II., pro se

2000 N. 16th Street
Arlington, Virginia

CERTIFICATE

I, Clive L. DuVal, II, a member of the Bar of the Supreme Court of the United States, and one of the appellees herein, hereby certify that three (3) copies of the foregoing Motion to Affirm were on this 8th day of October, 1971, mailed to the following: Honorable Andrew P. Miller, Attorney General of Virginia, Counsel for Appellants; Supreme Court Library Building, Richmond, Virginia 23219; Stanford E. Parris, Esquire, Counsel for Plaintiffs Stanford E. Parris, et al., 4085 Chain Bridge Road, Fairfax, Virginia 22030; The Honorable Andre Evans, Commonwealth's Attorney for Virginia Beach, Counsel for Defendant members of the Electoral Board of the City of Virginia Beach, Princess Anne Station, Virginia Beach, Virginia 23456; The Honorable Joseph H. Campbell, Commonwealth's Attorney of Norfolk, Counsel for Defendant members of the Electoral Board of the City of Norfolk, P.O. Box 1531, Norfolk, Virginia 23501; The Honorable R. F. Horan, Jr., Commonwealth's Attorney of Fairfax County, Counsel for Defendant members of the Electoral Board of Fairfax County, Fairfax, Virginia 22030; The Honorable Gordon B. Tayloe, Jr., Assistant City Attorney of the City of Norfolk, Counsel for Defendant-Intervenor City of Norfolk, 908 City Hall Building, Norfolk, Virginia 23501; The Honorable J. Dale Bimson, City Attorney of

Virginia Beach, Municipal Center, Virginia Beach, Virginia 23456; John Ashton, Esquire, Counsel for Defendant-Intervenor City of Virginia Beach, Hunton, Williams, Gay, Powell and Gibson, P.O. Box 1535, Richmond, Virginia 23212; The Honorable Henry E. Howell, Jr., Counsel for Plaintiff Henry E. Howell, Jr., et al., 808 Maritime Tower, Norfolk, Virginia 23510; Henry L. Marsh, III, Esquire, Hill, Tucker and Marsh, Counsel for Plaintiff-Intervenors William S. Thornton, et al., 214 East Clay Street, Richmond, Virginia 23219, and C. V. Spratley, Jr., Counsel for Defendant-Intervenor Lewis A. McMurran, Jr., P. O. Box 575, Newport News, Virginia 23607; and to Robert L. Weinberg, Esquire, 1000 Hill Building, Washington, D. C. 20006, and C. Stanley Dees, Esquire, 314 North Pitt Street, Alexandria, Virginia 22314, plaintiffs who have filed separate notices of appeal. All parties required to be served have been served.

CLIVE L. DUVAL, II
Appellee pro se